

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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LUIS NIEVES and MAYA JONES NIEVES,

Plaintiffs,

v.

**ORDER**  
05-CV-17S

FRANCES GONZALEZ, ET AL.,

Defendants.

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1. On November 12, 2004, Plaintiffs commenced this civil rights action in the Eastern District of New York pursuant to 42 U.S.C. § 1983. This case was subsequently transferred to this district on or about January 7, 2005.

2. On May 20, 2005, this Court referred this case to the Honorable H. Kenneth Schroeder, Jr., United States Magistrate Judge, for all proceedings necessary for a determination of the factual and legal issues presented, and to prepare and submit a report and recommendation containing findings of fact, conclusions of law and a recommended disposition of the case pursuant to 28 U.S.C. § 636(b)(1)(B).

3. On March 2, 2006, Judge Schroeder filed a Report and Recommendation recommending the disposition of several outstanding motions. No Objections to the Report and Recommendation were received from either party within ten (10) days from the date of its service, in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3).

4. This Court has carefully reviewed Judge Schroeder's Report and Recommendation as well as the underlying motion papers.

IT HEREBY IS ORDERED, that this Court accepts Judge Schroeder's Report and Recommendation (Docket No. 34) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Plaintiffs' Motion for Summary Judgment (Docket No. 10) is DENIED.

FURTHER, that Defendant Gonzalez's Motion for Summary Judgment (Docket No. 17) is GRANTED.

FURTHER, that Defendant Gonzalez be dismissed as a defendant in this case.

FURTHER, that Plaintiffs' Motions for Default Judgment (Docket Nos. 20, 21 and 22) are DENIED.

FURTHER, that Plaintiff is granted 120 days from the date of this Order to file proof of service on the remaining defendants in accordance with Rule 4 (l) and (m) of the Federal Rules of Civil Procedure.

SO ORDERED.

Dated: March 23, 2006  
Buffalo, New York

/s/William M. Skretny  
WILLIAM M. SKRETNY  
United States District Judge